

# Supreme Court of the United States

OCTOBER TERM, 1970

No. 324

---

PRESTON A. TATE,

*Petitioner,*

—v.—

HERMAN SHORT, Chief of Police, Houston, Texas,

*Respondent.*

---

ON WRIT OF CERTIORARI TO THE COURT OF  
CRIMINAL APPEALS OF TEXAS

---

## INDEX

	Page
Memorandum of Finality .....	1
Order of Decision and Denial of Motion for Rehearing, as transmitted by Court of Criminal Appeals of Texas to County Criminal Court at Law, No. 1, Harris County, Texas .....	2
Motion for Rehearing before the Court of Criminal Appeals of Texas .....	3
Decision of the Court of Criminal Appeals of Texas in Ex parte Tate .....	5
Summation of Relator .....	7
State's Appellate Brief .....	15
Record Filed in Court of Criminal Appeals of Texas .....	18

	Page
Caption .....	20
Application for Writ of Habeas Corpus and Order of the Court Thereon .....	20
Writ of Habeas Corpus Together with Return of the Sheriff thereon .....	27
Return of Herman Short .....	30
Judgement of the County Criminal Court at Law, No. 1, Harris County, Texas .....	33
Habeas Corpus Bond .....	34
Docket Sheet, August 30, 1968 .....	39
Affidavit of Inability to Pay Costs or Give Security therefor .....	41
Order of the County Criminal Court at Law, No. 1, Harris County, Texas .....	43
Designation of Materials for Inclusion .....	44
Docket Sheet: November 21, 1968 .....	45
Docket Sheet: November 22, 1968 .....	46
Docket Sheet: November 27, 1968 .....	47
Agreed Stipulations .....	49
Certificate of Clerk .....	51
Writ of Procedendo .....	52
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari .....	55

CLERK'S OFFICE  
COURT OF CRIMINAL APPEALS OF TEXAS  
AUSTIN, TEXAS

I, GLENN HAYNES, Clerk of the Court of Criminal Appeals of Texas, do hereby certify that in Cause No. 42,209 styled:

EX PARTE PRESTON A. TATE, APPELLANT

vs.

HERMAN SHORT, Chief of Police of the City of Houston  
Texas, APPELLEE

judgment of the County Criminal Court at Law No. 1 of Harris County, Texas, was affirmed on July 16, 1969. Appellant's Motion for Rehearing was overruled, without written opinion, October 22, 1969, and on October 24, 1969 mandate issued.

THEREFORE, with the overruling of Appellant's Motion for Rehearing, this cause was disposed of by this Court on October 22, 1969, appellant having exhausted all remedies in this, The Court of Criminal Appeals of Texas, and said judgment has now become final on the docket of this Court.

WITNESS my hand and Seal of said Court, at office, in Austin, Texas, this the 9th day of March, A.D. 1970.

/s/ Glenn Haynes  
GLENN HAYNES, Clerk of the Court  
of Criminal Appeals of Texas

[SEAL]

## TRIAL COURT NO. 245832

THE STATE OF TEXAS,

To the County Criminal Court at law No. 1 of Harris  
County—Greeting:

Before our Court of Criminal Appeals, on the 22nd day  
of October A.D. 1969, the cause upon appeal to revise or  
reverse your Judgment between

EX PARTE PRESTON A. TATE, APPELLANT

No. 42,209

*vs.*

THE STATE OF TEXAS, APPELLEE

was determined; and therein our said Court of Criminal  
Appeals made its order in these words:

Petitioner is an inmate of the prison farm of the City  
of Houston by virtue of a capias growing out of six traf-  
fic court convictions with aggregate fines of \$425.00.

We overrule appellant's contention that because he is  
too poor to pay the fines his imprisonment is unconsti-  
tutional. His status as an indigent does not render this  
petitioner immune from criminal prosecution.

The relief prayed for is denied.

Appellant's motion for rehearing overruled without  
written opinion.

WHEREFORE, We command you to observe the order  
of our said Court of Criminal Appeals in this behalf and  
in all things to have it duly recognized, obeyed and  
executed.

WITNESS, the HON. K. K. WOODLEY, Presiding  
Judge of our said Court of Criminal Appeals,  
with the Seal thereof annexed, at the City of  
Austin, this 24th day of October A.D. 1969

GLENN HAYNES  
Clerk.

/s/ [Illegible]  
Deputy Clerk

[SEAL]

[Filed, Oct 27 1969 Ray Hardy, District Clerk  
Harris County, Texas By [Illegible] Deputy]

STATE OF TEXAS

COUNTY OF HARRIS

I, Ray Hardy, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, filed on: Oct. 27, 1969, as appears of record in my office.

Witness my official hand and seal of office, this March 10, 1970.

RAY HARDY, District Clerk  
Harris County, Texas

By /s/ S. Daniel, Deputy

---

Reh. 10-15-69

No. 42,209

IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS

AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

MOTION FOR REHEARING

PETER S. NAVARRO, JR.  
Attorney for Appellant  
6731 Harrisburg Boulevard  
Houston, Texas 77011  
928-3943

[Filed in Court of Criminal Appeals Jul 31 1969  
Glenn Haynes, Clerk]

No. 42,209

IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS

AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

MOTION FOR REHEARING

TO THE HONORABLE COURT:

Comes now PRESTON A. TATE, Appellant, and moves for a Rehearing in this cause, asserting as grounds therefore, the following:

1.) Since it is undisputed that the Appellant is indigent, the trial Court should have imposed specific conditions of probation requiring "reasonable" fines to be paid in installments rather than give him no alternative but to serve a sentence in jail or the prison farm.

2.) Though Appellant's status as an indigent does not render him immune from criminal prosecution, his inability to pay the aggregate fines of \$425.00, thus causing him to be jailed, presents Appellant's contention that such a sentence establishes a dual standard of punishment, i.e., a fine for non-indigents and imprisonment for indigents, in contravention of the Constitution of the United States, and the State of Texas.

WHEREFORE, Appellant prays that this Honorable Court grant this Motion For Rehearing and discharge the Appellant from custody.

Respectfully submitted,

/s/ Peter S. Navarro, Jr.  
PERER S. NAVARRO, JR.  
Attorney for Appellant  
6731 Harrisburg Blvd.  
Houston, Texas 77011  
928-3943

## CERTIFICATION

I certify that a true copy of the Motion For Rehearing was mailed by United States Certified Mail, postage prepaid, to Honorable Carol S. Vance, District Attorney, Criminal Courts Building, Houston, Texas, 77002, Attorney for the State, on the 29th day of July, 1969.

/s/ Peter S. Navarro, Jr.  
PERER S. NAVARRO, JR.  
Attorney for Appellant  
6731 Harrisburg Blvd.  
Houston, Texas 77011  
928-3943

A True Copy

Attest: Glenn Haynes, Clerk  
Court of Criminal Appeals of Texas

By: /s/ Troy Bennett  
Deputy

[SEAL]

EX PARTE: PRESTON A. TATE

No. 42,209—Appeal from Harris County

## OPINION

Petitioner is an inmate of the prison farm of the City of Houston by virtue of a capias growing out of six traffic court convictions with aggregate fines of \$425.00.

We overrule appellant's contention that because he is too poor to pay the fines his imprisonment is unconstitutional. His status as an indigent does not render this petitioner immune from criminal prosecution.

The relief prayed for is denied.

MORRISON, Judge

(Delivered July 16, 1969)

No. 42,209

EX PARTE: PRESTON A. TATE, APPELLANT

vs.

THE STATE OF TEXAS, APPELLEE

APPEAL FROM HARRIS COUNTY

RELIEF DENIED

OPINION BY  
MORRISON, Judge

[Filed in Court of Criminal Appeals, Jul 16 1969  
Glenn Haynes, Clerk]

A True Copy

Attest: Glenn Haynes, Clerk  
Court of Criminal Appeals of Texas

By: /s/ Troy Bennett  
Deputy

[SEAL]



No. 42,209

IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS  
AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

SUMMATION OF RELATOR

PETER S. NAVARRO, JR.  
6731 Harrisburg  
Houston, Texas 77011  
Attorney for Relator

Of Counsel:

BROCK SHAMBERG  
1402 Prospect, # 1  
Houston, Texas 77004

[Filed in Court of Criminal Appeals, Jun 25 1969  
Glenn Haynes, Clerk]

HABEAS CORPUS, TO THE COURT OF CRIMINAL APPEAL,  
BY APPEAL FROM THE COUNTY CRIMINAL COURT AT  
# 1 OF HARRIS COUNTY, TEXAS

SHORT STATEMENT OF THE CASE

On the 7th August, 1968, the Relator, and his wife had reason to call the Houston City Police Department about a domestic matter (s/f p. 20). When the officers arrived at Relator's residence they first had a conversation with him, after which, the Relator was taken down to the police station. (s/f pp. 13-14)

The Relator's testimony reflects that he was eventually detained, the same day, at the City jail as a result of

some outstanding unpaid "traffic-tickets". (s/f pp. 14-16).

Relator appeared in the Corporation Court of the City of Houston on six different occasions, entering pleas of "not guilty" five times, and the plea of "nolo contendere" the sixth and last time. It was on this latter plea that the Court entered judgments on a series of alleged delinquent traffic-violations fining your Relator the total sum of Four hundred twenty-five dollars (\$425.00). (s/f pp. 20-22.)

At no time during his appearance before the Corporation Judge, was Relator appraised of his right to the advice of counsel, though he was told if he couldn't produce "... the attorney or the money ..." he, ... "would be in jail ..." (s/f p. 23).

After filing an affidavit that he was too poor to pay the fines assessed, the Relator was released on a Habeas Corpus bond on August 28, 1968. He served twenty-one days at the City of Houston Prison Farm. He has received credit for one hundred five dollars (\$105.00), or credit against the fine at five dollars (\$5.00) for each day or fraction of a day he has served, and could be released from custody, absent Habeas Corpus, if he were able to pay the uncredited sum of three hundred twenty dollars (\$320.00), which he cannot do because he hasn't the money. (s/f pp. 25-28).

The Court below denied the Writ of Habeas Corpus rather than dismiss it, permitting this Appeal to be heard, and to be determined before this Honorable Court, upon the law and the facts arising upon record. The Relator would exhaust his remedies here.

### POSTURE OF RELATOR

Fully aware that the design of this appeal is to do substantial justice, your Relator is most prone to develop, as they concern him, the two stark factual realities arising from the record.

On the one hand, and at all times material, the Relator is and was an indigent, or to use the language of the State's attorney in stipulation, "... he is poverty

stricken, and (that) his wholly family has been for all periods of time therein, and probably always will be . . ." (s/f p. 28). Short of some miracle, there is no conceivable way or manner in which the Relator can pay the sum of \$320.00 (the balance of the fine) at one time, and if this appeal fails, he will, upon remand to custody, again be committed to the City prison farm in lieu of payment of the remaining fine, at \$5.00 a day for 64 more days.

On the other hand, it should be emphasized that Relator appeared six times before the Corporation Judge, pleading "not guilty" five times, and lacking further resolution, ceased to the plea of "nolo-contendere" for the sixth and the last time. It was upon this plea that Relator was found "guilty" on all offenses charged, and fines were imposed on nine traffic violations; the Court "struck off" fifty dollars traffic fines on all, save one. (c/f agreed stipulations). On none of these appearances, were the fiscal abilities of the Relator alluded to as a matter of fact, there were no probes made, relative to his capacity to pay a fine-meanwhile his family was on relief. (s/f p. 28).

## ARGUMENT AND AUTHORITIES

### POINT I

IMPRISONMENT OF RELATOR, AN INDIGENT, TO THE CITY PRISON FARM IN CUSTODY OF THE CHIEF OF POLICE OF THE CITY OF HOUSTON, TEXAS, UNTIL RELATOR SHALL HAVE PAID TRAFFIC FINES TOTTALLING \$425.00, WHERE RELATOR WAS UNABLE TO PAY SUCH FINES, VIOLATED THE EIGHTH AMENDMENT PROHIBITION AGAINST EXCESSIVE, CRUEL AND PUNISHMENT.

It is undisputed that Relator has no funds, or property, and is unable to pay the traffic fines imposed upon him by the Corporation Court of Houston, Texas. He must therefore discharge the fines in full service in jail at the rate

of five dollars (\$5.00) per day.<sup>1</sup> The By-laws and Ordinances of the City of Houston are enforced by a fine not to exceed two hundred dollars (\$200.00).<sup>2</sup> The sentencing court by imposing fifty dollar (\$50.00) fines each for eight traffic infractions, and one twenty-five dollar (\$25.00) fine for one traffic case would prompt the Relator to suggest that though his indigency must have been obviously discernable, it apparently mattered little in the eventual assessment of the fines. Four hundred and twenty-five dollars (\$425.00) is an enormous amount of money for the Relator, and represents more than the equivalent of four disability checks which Relator receives from the Veteran's Administration monthly. It would seem that the sentencing Court could have been more tolerant in measuring and prescribing justice, especially after the six appearances by Relator before it.

The Relator is not unaware that is is generally settled that a direction in a sentence imposing a fine that Defendant stand committed until the fine is paid is no part of the penalty for the offense, but is merely a means of compelling obedience to the judgment of the Court.

However in *Chapman v. Selover*, 225 N.Y. 417, 421, Judge Cardozo elaborated on this by explaining that the "State when it punishes misdemeanors by fine, is not confined to the dubious remedy of a civil action for a penalty." Imprisonment is, he explained, another remedy which the State may employ against "The offender who REFUSES to pay."

Lest it be overlooked, the Relator, unlike the more affluent Defendant, does not carry the "keys to the jail in his pocket," and his predicament, is made hopeless by the imposition of a fine he is unable to pay. Moreover the failure, at any time previous to his being committed, to inquire into his economic capabilities further underscores the premise that the punishment is so disproportionate

---

<sup>1</sup> Houston Code, Sec. 15-60, Corporation Courts, (commitment to jail until the full amount of the fine is paid); and see also, Houston Code, Sec. 35-8 Prisoners, (Credit against fine for service in jail or municipal prison farm—generally).

<sup>2</sup> Houston Code, Art. 11, Sec. 12, Charter, (Fines for violation of Ordinances.)

tionate to the offense, that it violates the excessive, cruel and unusual punishment clause of the Federal as, well as the State, constitutions. *Nemeth v. Thomas* 35 USLW 2320 (N.Y. Sup. Ct. Dec. 5, 1966); *Robinson v. California*, 370 US 660 (1962).

"Robinson" points out that drug addiction is an involuntary "status" and a state law which made the "status" of narcotic addiction, a criminal offense requiring imprisonment in the County Jail of at least 90 days, inflicted cruel and unusual punishment.<sup>3</sup>

Relator relies heavily on "Robinson" and would apply the rationale there to his involuntary "status" of indigency. Consequently any state law or ordinance which makes a prisoner out of a poor man because he cannot pay a fine, but forces him to work the fine off or lay out in jail, inflicts excessive, cruel and unusual punishment.

## POINT II

IMPRISONMENT OF RELATOR, AN INDIGENT, TO THE CITY PRISON FARM IN CUSTODY OF THE CHIEF OF POLICE OF THE CITY OF HOUSTON, TEXAS, UNTIL RELATOR SHALL HAVE PAID TRAFFIC FINES TALLING \$425.00, WHERE RELATOR IS UNABLE TO PAY SUCH FINES VIOLATES HIS EQUAL PROTECTION GUARANTEES UNDER THE FEDERAL AND STATE CONSTITUTIONS

The sentences complained of lay an unconstitutionally unequal penalty upon the Relator. In a manner of speaking, they gave him the alternative of paying his entire debt to the State in dollars rather than in days. In effect, however, it left him no *choice* but serve a term of imprisonment that any person more affluent could have, and probably would have avoided serving.

<sup>3</sup> *Robinson v. California*, 82 SCT 1417, p. 1421. To be sure imprisonment for ninety days is not, in the abstract a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be cruel and unusual punishment for the "crime" of having the common cold.

The sentencing judge knew of Relator's predicament, and it goes without saying that the discriminatory character of the sentences is manifest.

No court without some reasonable installment method of payment should be permitted to be so arbitrary as to order the jailing of a Defendant simply because he is impecunious, and as we have noted before, imprisonment for non-payment of a fine, "can validly be used only as a method of collecting for a refusal to pay a fine, "and that it is illegal to imprison a Defendant who is financially unable to pay". This is particularly true in cases where inquiry into the Defendant's capacity to pay is avoided. *Martin v. Erwin* (# 13084) Supplemental Order, U.S. District Court, Western District, La., Feb. 27, 1968). *United States v. Doe et al*, 101 F. Supp. 609, (1951); *People v. Saffore* 218 NE<sup>2</sup> 689; *People v. Collins* 261 NYS 2d 970; *People v. McMillan* 279 N.Y.S. 2d 941, *Spinler v. Montana*, Mont. S. Ct. No. 11536 (Nov. 1968); *In Re Figueroa* California Sup. Ct. Mendocino Co., No. 4502-c (Nov. 1968); *Beckham v. Purdy*, JE (S.D. Fla.) No. 69-64-Civ. (Mar. 1969).<sup>4</sup>

Beginning 13 years ago in *Griffin v. Illinois*, 351 U.S. 12 (1956), the Supreme Court has been making it ever more emphatic that the Fourteenth Amendment include an indigent person accused of crime when it declares:

"... nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

---

<sup>4</sup> Chief Judge Hincks, in *United States v. Doe et al* commented that the sentencing judge will need all available information as to a Defendant's capacity to pay a fine, as it is not sound sentencing policy to impose fines beyond the capacity of the Defendant to pay (101 F. Supp. 609, p. 613, note 6)

In *Beckham v. Purdy*, the Court set out the following precept as having been established in Federal Law:

"... a Court is not powerless to compel a contumacious Defendant to pay a fine imposed as punishment in lieu of imprisonment, but imprisonment as a method of compelling payment of a fine may not be used in the case of an indigent who, although willing to do so, is without funds to pay the fine in order to avoid the alternative term of imprisonment. (U.S. District Court, Southern District, Florida, No. 69-64-Civ-JE, at pg. 4 of opinion.

Subsequent decisions, relying on the "Griffin" rationale hold that the imprisonment in lieu of fine discriminated between indigent and solvent Defendants in violation of the equal protection clause. For example in *People v. Collins* (supra, note /4) the court said:

It is only if we equate the payment of the fine with the additional period of detention in prison that both men can be said to stand equal before the law. An equation of one day of a man's liberty in jail for every dollar of the fine, in this enlightened era, should be examined very carefully before this form of equality of treatment is endorsed.

Relator submits that the decisions listed in the opinion of his argument are the only sound response to the Constitutional imperative that equal justice in criminal cases not be made to stand aside because the Defendant is without money.

### CONCLUSION

We disagree with the State's contention, in her appellate brief, that the transcript does not reveal error of constitutional proportion.

The policy behind the practice for nonpayment of fines is to provide a means of collecting the fines. This policy consideration, though effective when the Defendant is merely unwilling to pay the fine, is inapplicable when the Defendant is unable to pay the fine.

Imprisonment of indigents for nonpayment invariably results in a drain on the state's revenues. The State does not receive the initial fine and must spend money to maintain the indigent-Defendant in jail. If the indigent Defendant is the head of the household, his imprisonment will result in the likelihood, (as in Relator's case) that his family will have to turn to state welfare agencies for aid.

It may be said that the state is justified in punishing an indigent prison to prevent his eluding, without pain, the penalty a nonindigent suffers in paying a fine. It may be further argued that the penalties, while different in form, are equal in burden. In theory, perhaps, a days

imprisonment may have its price in dollars, and the two may be equated. But that is plainly not true here, where the equalization rate was fixed at one day in jail for each five dollars of the fine, even though the legislature has recently divided a minimum wage law of a dollar and a quarter an hour. No one can seriously contend that such a penalty falls with equal severity on a man who can pay it, and a man who cannot.

WHEREFORE, PREMISES CONSIDERED, Relator prays that he be Discharged.

Respectfully Submitted,

/s/ Peter S. Navarro, Jr.  
PETER S. NAVARRO, JR.  
Attorney for Relator  
6731 Harrisburg Blvd.  
Houston, Texas 77011  
928-3943

#### CERTIFICATION

I certify that a true copy of the Relator's Brief was mailed by United States Certified Mail, postage prepaid, to Honorable Carol S. Vance, District Attorney, Criminal Courts Building, Houston, Texas, 77002, Attorney for the State, on the 24th day of June, 1969.

/s/ Peter S. Navarro, Jr.  
PETER S. NAVARRO, JR.  
Attorney for Relator  
6731 Harrisburg Blvd.  
Houston, Texas 77011  
928-3943

A true Copy

Attest: Glenn Haynes, Clerk  
Court of Criminal Appeals of Texas  
By: /s/ Troy Bennett  
Deputy

[SEAL]



No. 42,209

IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS  
AT AUSTIN, TEXAS

---

EX PARTE PRESTON A. TATE

---

Appeal from the County Criminal Court at Law No. 1  
of Harris County, Texas

---

STATE'S APPELLATE BRIEF

---

JIM VOLLERS  
State's Attorney  
Austin, Texas

CAROL S. VANCE  
District Attorney  
Harris County, Texas

PHYLLIS BELL  
Assistant District Attorney  
Harris County, Texas  
Counsel for Appellee

[Filed in Court of Criminal Appeals, Jun 19 1969  
Glenn Haynes, Clerk]

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Appellant was granted a writ of habeas corpus in the County Criminal Court at Law No. 1 of Harris County, Texas, hearing on which was held on August 30, 1968.

The officer's return on said writ recited that Appellant was being held by virtue of commitments issued by Corporation Court No. 3 of the City of Houston, Texas, ordering that Relator be committed to the City Prison Farm in custody of the Chief of Police of the City of Houston.

After the hearing on the writ, the court denied the application and remanded Appellant to the Chief of Police of the City of Houston, Texas. Appeal is taken from this order.

There is a transcription of the court reporter's notes of the hearing. Evidence therein is ample to support the action of the court. There are no formal bills of exception. There is a stipulation in the transcript that Appellant was committed to the City Prison Farm until he paid fines totaling \$425.00. Appellant makes no showing that he has served enough time to entitle him to release under the provisions of Art. 45.53 VAACP. On the contrary, the Appellant affirmatively asserts in his application for the writ of habeas corpus that he is required to serve seventy-two more days in the prison to satisfy the said Art. 45.53.

Appellant has assigned no error by brief on appeal filed with the trial court, and the transcript does not reveal error of constitutional proportion. All proceedings appear to be regular, and nothing is presented for review.

Wherefore, premises considered, it is respectfully prayed that this remand be affirmed.

Respectfully submitted,

JIM VOLLERS  
State's Attorney  
Austin, Texas

CAROL S. VANCE  
District Attorney  
Harris County, Texas

/s/ Phyllis Bell  
PHYLLIS BELL  
Assistant District Attorney  
Harris County, Texas

*Certificate of Service*

I certify that a true copy of the foregoing State's Appellate Brief was mailed by United States Certified Mail, postage prepaid, to Mr. Peter S. Navvaro, 6731 Harrisburg, Houston, Texas, 77011, Attorney for Appellant, on the 20th day of June, A. D. 1969.

/s/ Phyllis Bell  
PHYLLIS BELL  
Assistant District Attorney  
Criminal Courts Building  
Houston, Texas 77002  
/telephone: 228-8311

A True Copy  
Attest: Glenn Haynes, Clerk  
Court of Criminal Appeals of Texas  
By: /s/ Troy Bennett  
Deputy

18

FROM:

THE COUNTY CRIMINAL COURT AT LAW NO. 1  
OF HARRIS COUNTY, TEXAS

42209

PRESTON A. TATE, APPELLANT

*vs.*

HERMAN SHORT, Chief of Police of the  
City of Houston, Texas, APPELLEE

Counsel for Appellant:

MR. PETER S. NAVARRO  
6731 Harrisburg Street  
Houston, Texas, 77011

[Filed in Court of Criminal Appeals, May 15, 1969,  
Glenn Haynes, Clerk.]

## INDEX

	Page
Caption .....	1
Application for Writ of Habeas Corpus and Order of the Court Thereon .....	2
Writ of Habeas Corpus Together with Return of the Sheriff Thereon .....	8
Return of Herman Short, Chief of Police .....	10
Judgment of the Court and Notice of Appeal .....	12
Habeas Corpus Bond .....	14
Docket Sheet for August 30, 1968 .....	18
Affidavit of Inability to pay Costs or give Security therefor ..	19
Order of the Court .....	20
Designation of Materials for Inclusion .....	21
Docket Sheet for November 21, 1968 .....	22
Docket Sheet for November 22, 1968 .....	23
Docket Sheet for November 27, 1968 .....	24
Agreed Stipulations .....	25
Certificate of the Clerk .....	26

IN THE COUNTY CRIMINAL COURT AT LAW NO. 1  
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF HARRIS

At a regular Term of the County Criminal Court at Law No. 1, of Harris County, Texas, begun and holden within and for the County of Harris, and State of Texas, at Houston on the 5th day of August, A. D., 1968, and which adjourned on the 5th day of October A. D. 1968, the Honorable Lee Duggan, Jr., Judge thereof presiding, the following cause came on for trial, to-wit:

No. 245832

EX PARTE: PRESTON A. TATE

*vs.*

HERMAN SHORT, Chief of Police of the  
City of Houston, Texas

HABEAS CORPUS FOR RELEASE

245832

STATE OF TEXAS     )  
                              )   SS  
COUNTY OF HARRIS )

TO THE HONORABLE JUDGE OF THE COUNTY  
CRIMINAL COURT NO. 1 OF HARRIS COUNTY,  
TEXAS:

The undersigned attorney for and on behalf of Petitioner, Preston A. Tate, represents unto the Court that said Preston A. Tate is illegally restrained of his liberty in Harris County, Texas, by Herman Short, Chief of Police of the City of Houston, Texas; and the said confinement and restraint is not by virtue of any writ, order or process save by an informal Order of Commitment in

lieu of payment of a accumulated fine of Four Hundred Twenty-Five and No/100 (\$425.00) Dollars. Because of the informal nature of the said committment or commitments, a copy or copies cannot be obtained to annex hereto, though your Affiant attaches hereto, the affidavits of Preston A. Tate, and his wife, Adah R. Tate, wherein references to various cause numbers are asserted, the same being germane to the said Preston A. Tate's illegal restraint by the said Herman Short.

Wherefore, Premises Considered, Petitioner, Preston A. Tate prays the Court to grant and issue the writ of Habeas Corpus to have the said Preston A. Tate forthwith brought before this Honorable Court to the end that he may be discharged from such illegal confinement and restraint.

/s/ Peter S. Navarro, Jr.  
 PETER S. NAVARRO, JR.  
 Attorney for Preston A. Tate  
 6731 Harrisburg Street  
 Houston, Texas 77011  
 WA 8-3943

I do, under oath, declare that the allegations of the foregoing petition are true according to my belief.

/s/ Peter S. Navarro, Jr.  
 PETER S. NAVARRO, JR.

SWORN and SUBSCRIBED to on this the 26th day of August, A.D. 1968.

/s/ [Illegible]  
 Notary Public in and for  
 Harris County, Texas

[NOTARY SEAL]

My commission expires June 1, 1969

## CITY OF HOUSTON PRISON FARM

STATE OF TEXAS     )  
                               )   SS  
 COUNTY OF HARRIS )

Before me, the undersigned authority, personally appeared Preston A. Tate, who by me being duly sworn, deposes and says the following:

I am imprisoned, as a result of being unable to pay a fine in the above numbered and entitled causes.

Because I am too poor, I am, therefore, unable to pay the accumulated fine of \$425.00, thus:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas Operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine Run Red Light
6605 - 1911	25.00	May 27, 1966 - Capias pro-fine No Texas operator's license

And I cannot elect to satisfy the fine by payment of same as a result of my poverty.

Because of my imprisonment, my ability to gain a livelihood is fundamentally and seriously impaired.

I urge consideration of this affidavit, not only for myself, but for my wife, Adah Tate and my two sons, Robert Preston, age 2, and David Keith, age 8 weeks, all of whom are dependent upon me for their support and welfare.

/s/ Preston A. Tate  
 PRESTON A. TATE

SWORN TO AND SUBSCRIBED before me this 20th day of August, 1968, by said affiant while under oath.

/s/ [Illegible]  
 Notary Public in and for  
 Harris County, Texas

[NOTARY SEAL]



## IN RE: PRESTON A. TATE

STATE OF TEXAS

COUNTY OF HARRIS

This is to state under oath that the undersigned, Adah R. Tate, is the lawful wife of Preston A. Tate, and that the said Preston A. Tate is without resources to pay for various fines said to be due to the City of Houston, Texas; that said party was arrested on or about August 7, 1968; that the total fines set by the Court amounted to \$425.00, whereas there is as of this day a credit of \$65.00 or a total of 13 days at \$5.00 and that Mr. Tate would not be discharged from his present confinement until he may have served 72 more days at the City of Houston Prison Farm, from date hereof.

Whereas such confinement would create a very severe hardship on myself and our two (2) children, one male child, ROBERT PRESTON TATE, age 1 year 11 months and DAVID EITH TATE, age 8 weeks old by virtue of the fact that I am not employable as being needed at home and since our sole income is \$104.00 per month from Mr. Tate's Veteran Administration Disability Pension.

Wherefore, it is stated that the continued confinement of PRESTON A. TATE creates a very severe hardship upon us due to the foregoing.

/s/ Adah R. Tate  
ADAH R. TATE

SWORN TO AND SUBSCRIBED before me this 19th day of August, 1968, by said affiant while under oath.

/s/ [Illegible]  
Notary Public in and for  
Harris County, Texas

[NOTARY SEAL]

## THE STATE OF TEXAS,

To Herman Short

Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return as the law directs.

Witness my official signature at Houston, Texas.  
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.  
Judge Presiding

Bail fixed at \$500.00 pending hearing.

## RETURN OF PERSON EXECUTING WRIT

(Arts. 177, 178, C. C. P.)

Came to hand the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock  
\_\_\_\_M., and executed the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, by deliver-  
ing to the within named \_\_\_\_\_  
in person, a true copy of this Writ.

Sworn to and subscribed before me, this \_\_\_\_ day of  
\_\_\_\_\_ 19\_\_\_\_.

RETURN OF PERSON RESTRAINING PRISONER  
(Arts. 179, 180, C. C. P.)

THE STATE OF TEXAS )  
 )  
COUNTY OF HARRIS )

I, \_\_\_\_\_ of said County of Harris, in obedience to the within Writ of Habeas Corpus, have herewith the body of the within named \_\_\_\_\_ before the said \_\_\_\_\_; and for return of said Writ do state that said \_\_\_\_\_ is in my custody as \_\_\_\_\_ of said County, by virtue of a certain \_\_\_\_\_ issued by \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 19, \_\_\_, by which I was commanded to take the body of the said \_\_\_\_\_ and him safely keep, and have him before \_\_\_\_\_ to answer a charge of \_\_\_\_\_ preferred against him by \_\_\_\_\_ a copy of which said \_\_\_\_\_ is annexed hereto:

Sworn to and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

*vs.*

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY  
District Clerk  
Harris County, Texas

By: /s/ T. Allen  
Deputy

[Filed: August 28, 1968. Ray Hardy, District Clerk,  
Harris County, Texas. By: T. Allen, Deputy.]

WRIT OF HABEAS CORPUS, TOGETHER WITH THE RETURN  
OF THE SHERIFF THEREON. FILED: AUGUST 28, 1968.

THE STATE OF TEXAS,

To Herman Short  
Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return as the law directs.

Witness my official signature at Houston, Texas.  
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.  
Judge Presiding

Bail fixed at \$500.00 pending hearing.

RETURN OF PERSON EXECUTING WRIT

(Arts. 177, 178, C. C. P.)

Came to hand the 28 day of August 1968, at 11:12 o'clock A.M., and executed the 25 day of August 1968, by delivering to the within named George L. Seber @ 12:05 P.M. in person, a true copy of this Writ.

/s/ [Illegible]  
/s/ [Illegible]

Sworn to and subscribed before me, this 28 day of August 1968.

/s/ [Illegible]

[NOTARY SEAL]

---

## RETURN OF PERSON RESTRAINING PRISONER

(Arts. 179, 180, C.C.P.)

THE STATE OF TEXAS)

COUNTY OF HARRIS )

I, \_\_\_\_\_ of said County of Harris, in obedience to the within Writ of Habeas Corpus, have herewith the body of the within named \_\_\_\_\_ before the said \_\_\_\_\_; and for return of said Writ do state that said \_\_\_\_\_ is in my custody as \_\_\_\_\_ of said County, by virtue of a certain \_\_\_\_\_ issued by \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by which I was commanded to take the body of the said \_\_\_\_\_ and him safely keep, and have him before \_\_\_\_\_ to answer a charge of \_\_\_\_\_ preferred against him by \_\_\_\_\_ a copy of which said \_\_\_\_\_ is annexed hereto:

Sworn to and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

vs.

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY  
District Clerk  
Harris County, Texas

By: /s/ T. Allen  
Deputy

RETURN OF HERMAN SHORT, CHIEF OF POLICE  
FILED: SEPTEMBER 5, 1968.

THE STATE OF TEXAS,

To Herman Short  
Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return as the law directs.

Witness my official signature at Houston, Texas.  
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.  
Judge Presiding

Bail fixed at \$500.00 pending hearing.

[Filed Sep. 5, 8:30 a.m., '68, Ray Hardy,  
Dist. Clerk, Harris County, Texas.]



## RETURN OF PERSON EXECUTING WRIT

(Arts. 177, 178, C. C. P.)

Came to hand the \_\_\_ day of \_\_\_\_\_ 19\_\_\_, at \_\_\_\_\_ o'clock  
 \_\_\_M., and executed the \_\_\_ day of \_\_\_\_\_ 19\_\_\_, by deliv-  
 ering to the within named \_\_\_\_\_  
 in person, a true copy of this Writ.

\_\_\_\_\_  
 \_\_\_\_\_

Sworn to and subscribed before me, this \_\_\_ day of  
 \_\_\_\_\_ 19\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_

## RETURN OF PERSON RESTRAINING PRISONER

(Arts. 179, 180, C. C. P.)

THE STATE OF TEXAS )  
 )  
 COUNTY OF HARRIS )

I, W. T. Higgins of said County of Harris, in obedi-  
 ence to the within Writ of Habeas Corpus, have herewith  
 the body of the within named Preston A. Tate, released  
 on bond as per order of this instrument and release No  
 43829; and for return of said Writ do state that said  
 Preston A. Tate was in my custody as prisoner of said  
 County, by virtue of a certain Commitments and Capias  
 Pro Fines issued by Corp. Court No. 3, City of Houston,  
 Texas on the 7 day of August, 1968, by which I was  
 commanded to take the body of the said Preston A. Tate

and him safely keep, and have him before Judge Lee Duggan, Jr. or to release him on bond as ordered. to

answer a charge of \_\_\_\_\_ preferred  
against him by \_\_\_\_\_

a copy of which said \_\_\_\_\_ is annexed  
hereto:

H. B. SHORT  
Chief of Police

/s/ W. T. Higgins  
Capt., Jail Division

Sworn to and subscribed before me, this 30 day of  
August, 1968.

/s/ T. J. Lero  
T. J. LERO  
Notary Public in and for  
Harris County, Texas

[NOTARY SEAL]

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

*vs.*

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY  
District Clerk  
Harris County, Texas

By: /s/ T. Allen  
Deputy

JUDGMENT OF THE COURT AND NOTICE OF APPEAL  
RECORDED: VOLUME 14, PAGE 238

HABEAS CORPUS

MINUTES OF THE COUNTY CRIMINAL COURT  
AT LAW NO. 1 OF HARRIS COUNTY, TEXAS.  
AT AUGUST TERM, A. D. 1968

No. 245832

PRESTON A. TATE

*vs.*

THE STATE OF TEXAS

August 30th, A. D. 1968

HABEAS CORPUS

THIS DAY came on to be heard before me this application for the Writ of HABEAS CORPUS against Herman Short, Chief of Police, City of Houston, Texas, and the said respondent Herman Short, Chief of Police, City of Houston, Texas, having made due return of the said Writ of HABEAS CORPUS herein served upon him and having produced before me the person of the said Preston A. Tate I proceeded to hear the said application, and after having examined the Writ and the return of the respondent Herman Short, Chief of Police, City of Houston, Texas, and all papers and documents attached thereto, and having heard the testimony offered on both sides, I am of the opinion that legal cause has been shown for the imprisonment or restraint of the said Preston A. Tate. I am of the opinion that the said Preston A. Tate is legally held in custody and under restraint of his liberty by the said respondent Herman Short, Chief of Police, City of Houston, Texas. It is therefore ordered and adjudged that the application of the said Preston A. Tate herein be denied, and that the said Preston A. Tate be and he is now hereby remanded to the custody of the

said respondent Herman Short, Chief of Police, City of Houston, Texas.

To which action of the Court the Relator in open court excepts and gives notice of Appeal to the Court of Criminal Appeals of the State of Texas at Austin, Texas.

\$500.00 Bond remains in effect pending ruling by the Court of Criminal Appeals in Austin, Texas.

[Recorded: Volume 14, Page 238 General Minutes County Criminal Court at Law No. 1 of Harris County, Texas.]

### HABEAS CORPUS BOND

FILED: AUGUST 29, 1968

No. 245,832

EX PARTE: PRESTON A. TATE

### HABEAS CORPUS BOND

THE STATE OF TEXAS )

) SS

COUNTY OF HARRIS )

KNOW ALL MEN BY THESE PRESENTS THAT we PRESTON A. TATE, (Applicant) as principal, and other signers hereto, as sureties, are held and firmly bound unto the State of Texas, in the full and just sum of FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally; And in addition thereto, we are bound for the payment of all fees and expenses that may be incurred by peace officers in rearresting principal in the event the condition of this bond are violated. For the payment of which sum or sums well and truly to be made, we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally by these presents:

WHEREAS, the above bounden Principal (Applicant) was on or about the 17th day of August, A.D., 1968, found guilty of the following offenses:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine Run Red Light
6605 - 1911	25.00	May 27, 1966 - Capias pro-fine No Texas Operator's License

WHEREAS the said Applicant (Principal) did apply to the County Criminal Court No. One of Harris County, Texas, for a Writ of Habeas Corpus, and,

WHEREAS the Judge of said County Criminal Court at Law No. One, did on the 27th day of August, A.D., 1968, grant and issue a Writ of Habeas Corpus directed to Herman Short, Chief of Police, Houston, Texas, commanding him to produce before said Court, the above bounden Principal (Applicant) on the 30th day of August, A.D. 1968, at Two (2:00) O'Clock P.M. in the Court Room of said Court, in the City of Houston, Harris County, Texas, and at said time and place to show why Applicant is held in custody or restrained by him, the said Chief of Police.

WHEREAS, said Court did fix the amount of bail pending the examination or hearing upon said Writ at Five Hundred (\$500.00) Dollars,

NOW, THE CONDITION OF THE ABOVE BOND is such that if the above bounden Principal (Applicant) shall make his personal appearance as required by law before the said Court in the Court Room of said Court in the City of Houston, Harris County, Texas, on the 30th day of August A.D., 1968, at Two O'Clock P.M. and there to remain from day to day and not depart until discharged by due course of law, then the above bond to be null and void, otherwise to be and remain in full force and effect.

WITNESS our hands the 28th day of August, A.D.,  
1968.

/s/ Preston A. Tate  
Principal

/s/ Howard G. Cook  
Surety

/s/ Kathryn B. Cook  
Surety

Taken and approved by me  
this 28th day of August, 1968.

/s/ Lee Duggan, Jr.  
Judge presiding  
County Court at Law No. 1  
Harris County, Texas

Taken & Approved by me  
this 28th day of August, 1968

C. V. (BUSTER) KERN  
by: /s/ [Illegible]  
Deputy

[Filed (Date and Time Illegible), Ray Hardy,  
Dist. Clerk, Harris County, Texas.]

# APPEARANCE BOND—County Criminal Court at Law No. \_\_\_\_\_

THE STATE OF TEXAS }  
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as principal, and the

undersigned, WILLIAM E. COOK

WILLIAM E. COOK

as sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of

\_\_\_\_\_ DOLLARS,

for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally and firmly, by these presents.

The condition of the above obligation is such, that, whereas, the above bound principal \_\_\_\_\_

\_\_\_\_\_ has been arrested by C. V. BUSTER KERN, Sheriff of Harris County, Texas, on a charge of a misdemeanor, by virtue of a capias, issued to said Sheriff by R. J. Lindley, ex-officio Clerk of County Criminal Court at Law No. \_\_\_\_\_ of Harris County, Texas.

Now if the said principal shall be and personally appear instantler at the present term of the County Criminal Court at Law No. \_\_\_\_\_ of Harris County, Texas, now in session in and for the County of Harris, at the Court House thereof, in the City of Houston, Texas, there to remain in attendance from day and from term to term until discharged by due order of the Court, to answer the State aforesaid on said charge of a misdemeanor and not to depart the Court, without leave, then, and in that case, this bond to be null and void, otherwise to remain in full force and effect and in addition thereto, we are bound for the payment of all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_

A. D. 19 \_\_\_\_\_

Taken and approved this \_\_\_\_\_

day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_

C. V. BUSTER KERN, Sheriff, Harris County, Texas.

Principal

Address

Phone

By \_\_\_\_\_, Deputy

Surety

Filed \_\_\_\_\_

HOUSTON, TEXAS 77002

CA 3-8377





**NOTARY PUBLIC**  
**COUNTY OF HARRIS**

Before me, the undersigned authority, a Notary Public in and for said State and County, on this day 19-  
1958, to me well known, and known to  
personally appeared

me to be a creditable person, who, after being by me first duly sworn, on oath, deposes and says as follows, to-wit:

That the affiant desires and proposes to become a surety on the bond of  
Hector C. Duti, in connection with Hector C. Duti

1958-2-15-832-

and in order to induce C. V. BUSTER KERN, Sheriff, Harris County, Texas,

the official charged with the duty of approving or accepting said bond, to accept the bond of said

Hector C. Duti, makes the following statement concerning affiant's financial condition and with the affiant and another or others as sureties thereon, to-wit:

That affiant is the sole owner of the following described properties; that each piece of the same is presently of the market value set opposite each piece of the same; that the same is encumbered only to the extent and in the amount set opposite each piece of said property, and that each piece of the same, after deducting the amount of the encumbrance shown from the present market value thereof, has the net value set opposite each piece thereof, to-wit:

LOCATION AND DESCRIPTION	PRESENT MARKET VALUE	ENCUMBRANCE	NET VALUE
Lot 1, Blk 14 Oak Forest and other properties in Harris County, Texas	\$113,000.00	\$35,000.00	\$78,000.00

Plus affidavit on file  
with Sheriff's office

That none of the property above described is affiant's homestead, and that the affiant is not using, and does not intend to use, the same, or any part thereof, for any homestead or business purpose. That no part of said property is exempt from forced sale under the laws of the State of Texas; that no part of said property is involved in litigation of any kind or character; that the title to the above described property is good of record and in fact in the affiant; that the affiant has never heard his title to any part of said property questioned by any person or corporation whomsoever, and that no part of the same is occupied by any person or corporation claiming adversely to the affiant.

That the following is a full and complete list and statement of all bonds of every kind and character on which the affiant is a surety or principal, and the amounts of such bonds, to-wit:

List on file with District Attorney

That there are no abstracts of judgment recorded in Harris County, Texas, or elsewhere, against the affiant.

That the affiant makes this statement for the purpose of inducing the approval and acceptance of said bond with himself as a surety thereon, well knowing and believing that the making of this statement will induce the official charged with the duty of accepting and approving said bond to accept and approve the same, and that all statements herein contained are true, SO HELP ME, GOD.

Subscribed and sworn to before me this the 28th day of August, A. D. 1958  
Hector C. Duti Affiant-Surety

Witness my hand and seal of office this the 28th day of August, A. D. 1958

the official charged with the duty of approving or accepting said bond, to accept the bond of said

Robert A. Holtz makes the following statement concerning affiant's financial condition and with reference to properties owned by affiant, to-wit:

That affiant is the sole owner of the following described properties; that each piece of the same is presently of the market value set opposite each piece of the same; that the same is encumbered only to the extent and in the amount set opposite each piece of said property, and that each piece of the same, after deducting the amount of the encumbrance shown from the present market value thereof, has the net value set opposite each piece thereof, to-wit:

LOCATION AND DESCRIPTION	PRESENT MARKET VALUE	ENCUMBRANCE	NET VALUE
Lot 1, Blk 14 Oak Forest and other properties in Harris County, Texas	\$113,000.00	\$35,000.00	\$78,000.00

Plus affidavit on file  
with Sheriff's office

That none of the property above described is affiant's homestead, and that the affiant is not using, and does not intend to use, the same, or any part thereof, for any homestead or business purpose. That no part of said property is exempt from forced sale under the laws of the State of Texas; that no part of said property is involved in litigation of any kind or character; that the title to the above described property is good of record and in fact in the affiant; that the affiant has never heard his title to any part of said property questioned by any person or corporation whomsoever, and that no part of the same is occupied by any person or corporation claiming adversely to the affiant.

That the following is a full and complete list and statement of all bonds of every kind and character on which the affiant is a surety or principal, and the amounts of such bonds, to-wit:

List on file with District Attorney

That there are no abstracts of judgment recorded in Harris County, Texas, or elsewhere, against the affiant.

That the affiant makes this statement for the purpose of inducing the approval and acceptance of said bond with himself as a surety thereon, well knowing and believing that the making of this statement will induce the official charged with the duty of accepting and approving said bond to accept and approve the same, and that all statements herein contained are true, SO HELP ME, GOD.

Subscribed and sworn to before me this 28th day of August, A. D. 1968  
by Robert A. Holtz Affiant-Surety

Witness my hand and seal of office this the 28th day of August, A. D. 1968  
Robert A. Holtz, affiant.

(NOTARY SEAL)

THE STATE OF TEXAS, {  
COUNTY OF HARRIS }

Before me, the undersigned authority, a Notary Public in and for said State and County, on this day personally appeared Robert A. Holtz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 28th day of August, A. D. 1968.

(NOTARY SEAL)

Notary Public in and for Harris County, Texas.

IN COUNTY CRIMINAL COURT AT LAW NO. 1  
FRIDAY, AUGUST 30, 1968

245576

ROBERT FRANKLIN PRICE

AGGR. ASSAULT

*Waived right of counsel; Plea of Guilty; Credit 30 days in Harris County Jail; Credit 13 days.*

TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

245580

JOSEPH CARL GANDEL

D. W. I.

JAIL

*Waived right of counsel; Plea of Guilty; 5 days + \$100.00; Credit 10 days.*

TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

245660

PHILLIP TERRY ROBERTSON

THEFT

JAIL

II

*Request 9/3/68 No*

*Issue*

245676

TONY GREEN

AGGR. ASSLT. ON AN OFFICER

JAIL

*Waived right of counsel; Plea of Not Contender; Guilty; \$35.00; Credit*

*12 days* TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

244824

RONALD KENT FRANKS

CARRYING PRO. WEAPON

JAIL

*Request 7/3/68 No Issue*

II

245832

PRESTON A. TATE

WRIT OF HABEAS CORPUS

JAIL

*Writ Hearing on Writ. All parties present.*

2PM

245580

JOSEPH CARL GAGEL

D. W. I.

JAIL

Waived right of counsel; Plea of Guilty;  
5 days + \$100<sup>00</sup>; Credit 10 days.

TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

245660

PHILLIP TERRY ROBERTSON

THEFT

JAIL

Reset 9/3/68 ~~is~~ No  
Issue

III

245676

TONY GREEN

AGGR. ASLT. ON AN OFFICER

JAIL

Waived right of counsel; Plea of Not  
Guilty; Guilty; \$35<sup>00</sup>; Credit  
12 days TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

244824

RONALD KENT FRANKS

CARRYING PRO. WEAPON

JAIL

Reset 7/3/68 No Issue

III

245832

PRESTON A. TATE

WRIT OF HABEAS CORPUS

JAIL

~~too~~ Hearing on writ. All parties present.  
Argument, writ of Habeas Corpus denied.  
Relator remanded to custody. Appeal denied.  
~~Relator remanded to custody. Appeal denied.~~  
~~Relator remanded to custody. Appeal denied.~~  
~~Relator remanded to custody. Appeal denied.~~  
~~Relator remanded to custody. Appeal denied.~~  
\$500 Bond to continue an Appeal.

2<sup>PM</sup>

Bond

9/3/68

TERRY TAYLOR

W. CLARK

JAIL

AFFIDAVIT OF INABILITY TO PAY COSTS  
OR GIVE SECURITY THEREFOR  
FILED: OCTOBER 31, 1968

IN THE COUNTY CRIMINAL COURT NUMBER ONE  
OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

AFFIDAVIT OF INABILITY TO PAY COSTS  
OR GIVE SECURITY THEREFOR

TO THE CLERK AND COURT REPORTER OF SAID HONORABLE  
COURT:

Now comes PRESTON A. TATE, Petitioner, and having been duly sworn, makes the following statement:

I am too poor to pay the costs of court and Appeal in the above styled and numbered cause and I am unable to give security therefor.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Clerk prepare an appellate record and perform all other services required of him, in the same manner as if the costs had been paid or the security given, and that the Court Reporter prepare a statement of facts in question and answer form, the same to constitute part of the record.

/s/ Peter S. Navarro, Jr.  
Attorney for Plaintiff  
6731 Harrisburg Street  
Houston, Texas 77011  
WA 8-3943

/s/ Preston A. Tate  
Petitioner

[Filed Oct. 31, 1968, Ray Hardy, District Clerk,  
Harris County, Texas, By /s/ (Illegible), Deputy.]

STATE OF TEXAS     )  
                               )  
 COUNTY OF HARRIS )

SWORN TO AND SUBSCRIBED before me by Preston A. Tate, this 11th day of October, 1968, to certify which witness my hand and seal of office.

/s/ Linda Naraiyo  
 Notary Public in and for  
 Harris County, Texas

[NOTARY SEAL]



ORDER OF THE COURT  
FILED: NOVEMBER 14, 1968

IN THE COUNTY CRIMINAL COURT AT LAW  
NUMBER ONE OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

ORDER

THE AFFIDAVIT OF PRESTON A. TATE, Petitioner in above styled and numbered cause having been presented to this Court stating that Petitioner is too poor to pay costs of Court and appeal in above said cause of action and praying that the Clerk of said Court prepare an Appellate record and perform all other services required of him, in the same manner as if the costs had been paid or the security given, and that the Court Reporter prepare a statement of facts in question and answer form, the same to constitute a part of the record and it appearing to the Court that such petition is duly sworn to,

It is ORDERED, ADJUDGED and DECREED that Petitioner's application for a statement of facts and other relief as contained in said affidavit be heard before me at 2:30 o'clock P.M. on the 21 day of November, 1968, in the County Criminal Court at Law Number One Courtroom of Harris County, Texas.

/s/ Lee Duggan, Jr.  
Presiding Judge

[Filed (Date and Time Illegible), Ray Hardy, Dist. Clerk,  
Harris County, Texas, By /s/ (Illegible), Deputy.]

DESIGNATION OF MATERIALS FOR INCLUSION  
FILED: NOVEMBER 15, 1968

IN THE COUNTY CRIMINAL COURT NUMBER ONE  
OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

DESIGNATION OF MATERIALS FOR INCLUSION  
IN THE RECORD

TO THE HONORABLE CLERK OF COUNTY CRIMI-  
NAL COURT AT LAW NUMBER ONE, HARRIS  
COUNTY.

COURT REPORTER:

Pursuant to Article 40.09 of the Texas Code of Crimi-  
nal Procedures, the Relator, PRESTON A. TATE re-  
quests the following matter for inclusion in the record  
in the Appeal, to the Texas Court of Criminal Appeals,  
to wit:

- 1.) Petition For Writ of Habeas Corpus, and accom-  
panying affidavits;
- 2.) Order granting hearing on the Petition and Order  
setting bond;
- 3.) Order denying writ;
- 4.) Order continuing Relator's bond, pending appeal;
- 5.) Relator's Pauper's Oath;
- 6.) Transcription of all of the proceedings shown by  
the notes of the Reporter;
- 7.) All docket entries by the Court;
- 8.) All orders relating to the preparation of the record  
without payment of costs.

/s/ Peter S. Navarro, Jr.  
PETER S. NAVARRO, JR.  
Attorney for Relator-Appellant  
6731 Harrisburg Street  
Houston, Texas 77011  
Wa 8-3943

[Filed (Date and Time Illegible), Ray Hardy, Dist. Clerk,  
Harris County, Texas, By /s/ (Illegible), Deputy.]



Willie R. Myles

F S G I

Steck

Plea of Guilty; #75<sup>00</sup>;

Motion 12/11/68

Willie R. Myles

NOL

Steck

DISMISSED ON MOTION OF STATE CLERK. PD

245346

Willie R. Myles

Neg coll

Steck

jury selected, unimpaired & sworn, DEFENDANT, ONLY ASSIGNED ACCORDING TO 1.17, STATES EVIDENCE & STATEMENTS. DEF. READS without error. Charge prepared & filed as read to jury. Argument & jury selected 3:33. Verdict: 3:41. ~~Verdict~~ punishment. ~~Hearing~~ #5<sup>00</sup>. Motion 12/11/68. adjourn

245564

Joe Ray Blalack

Aggr assault

Reset

1/13/69 with issue

245832

Preston A. Tate

Hearing

was 3/43

Reset 11/22/68 No issue

245880

Loyd Russell Andrews

Speeding

Weimer

1302

Reset

1/14/69 with issue

245346

Willie R. Nyles

Neg coll  
by solicitor, unpermitted & return  
States evidence & statements. Def. read without record.  
Judge prepared affidavits read by jury. Defendant &  
jurors returned 3:33. Verdict: 3:41. ~~Defendant~~ Punishment  
Hearing. #512. Motion 12/11/68. *adjourn*

245564

Joe Ray Blalack

Aggr assault

*Read*

*1/13/69 with*

*issue*

245832

Preston A. Tate

Hearing

*Read 11/22/68 No issue*

was 3/43

1<sup>30</sup>

245880

Lloyd Russell Andrews

Speeding

Weimer

issue

*Read*

*1/14/69 with*

*issue*

✓ 246040

Marvin O. Cooper

Speeding

Heath

*atg.*  
DISMISSED ON MOTION OF STATE *Hinton, T*

*Att. D.A.*

✓ 246048

Delois W. Thomas, Jr.

Speeding

Kahn

DISMISSED ON MOTION OF STATE *Hinton T*

*L. Kahn*

2449300

James Leo Pothorford  
James Clint Smith

Theft  
"

Jail  
"

Reset 12/3/68 No Issue

24645 v James Robert Stanley Dwis. 3rd Farley  
Reset 12/20/68 No Issue

247028 HERMAN EVERITT Ivesy NEG. HOM

Reset 12-20-68 ~~the~~ No  
Issue

245,832- PRESTON

A. TATE WRIT.

Reset - 11/27/68 with  
note

130

246,044 CLEMON J. PINNER Neg. Coll.

DISMISSED ON MOTION OF STATE & DAWCETTE  
ARREST. D.A.

#6

Rec'd 2/17/69 New York

244620

Rayfield Jackson

Inter of vocation

Fender

1/23/68

Rec'd 1/23/68 with advice.

Atty  
Gen

Charge rec'd to State.

244656

Thomas Randolph Teague

Shoplifting

Mahas

N

See Ellis  
P.C. by C.A.  
P.C.DISMISSED ON MOTION OF STATE  
Atty Gen, El  
Atty DA

245328

Danny Anthony Bonetati

Neg coll

Gray

Rec'd 12/19/68 with  
advice

245724

James K. Benton

W. check

Galli

Rec'd 1/19/68 No  
issue

NIF

C Galli

245808

Otha Lee Ethel alias

James Brown, Jr.

Pistol

Kilgarlin

1/23/68

Plea of Guilty; 30 days.

Atty Gen  
C. Melton

TEN DAYS TIME FORFEIT, DEFENDANT SENTENCED

1st R -  
Hed

244656

N

Geo Ellis  
P.L. Co. A  
P.O.

Thomas Randolph Teague

Shoplifting

Nahas

DISMISSED ON MOTION OF STATE

Clon, El  
App. DA

245328

Danny Anthony Bonetati

Neg coll

Gray

Recd 12/19/68 with  
advice

245724

James M. Benton

W. check

Galli

Recd 1/19/68 No  
issue

C Galli

245808

Otha Lee Ethel alias  
James Brown, Jr.

Pistol

Kilgarlin

Plea of GUILTY; 30 days.

TEN DAYS TIME FORCED, DEFENDANT SENTENCED

Y. B. H. S. T. R.  
C. M. E. L. I. N.

1st R -  
Recd

245828

Jordan M. Roman

Aggr assault

Alfano

Recd 1/21/69 with  
advice

245832

Preston A. Tate

Hearing

Hearing on Debt's Affidavit of Indigency.  
Held: Indigency. C. B. I. ORDERED TO  
prepare the Affidavit. Record is performed.

24

Recd

# AGREED STIPULATIONS

FILED: MAY 13, 1969

## IN THE COUNTY CRIMINAL COURT AT LAW #1 OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

# AGREED STIPULATIONS

IT is agreed and stipulated by and between Relator, PRESTON A. TATE, and the State of Texas, by his attorney, that the said C. RAYMOND JUDICE, if he testified, would testify he was appointed Recorder for the Corporation Court Number Three of Houston, Texas by the Mayor of the City of Houston. That he is a full time Recorder or Corporation Judge as that term is used in this City; that he is an Attorney—he is an Attorney-at-law, and was the Judge who heard evidence and sentenced and committed Relator after his arrest on August 7, 1968, to the City Prison Farm in custody of the Chief of Police of the City of Houston, Texas until he shall have paid fines totalling \$425.00 in the following causes, to-wit:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine
		Run Red Light
6605 - 1911	25.00	May 27, 1966 - Capias pro-fine
		No Texas Operator's License

Signed this the 13 day of May A.D. 1969.

/s/ Joe S. Moss  
JOE S. MOSS  
Attorney for the  
State of Texas

/s/ Peter S. Navarro, Jr.  
PETER S. NAVARRO, JR.  
Attorney for Relator

[Filed May 13, 1969, Ray Hardy, District Clerk,  
Harris County, Texas, By /s/ (Illegible), Deputy.]



IN THE COUNTY CRIMINAL COURT AT LAW NO. 1  
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS )  
 )  
COUNTY OF HARRIS )

CERTIFICATE OF THE CLERK

I, RAY HARDY, District Clerk of Harris County, Texas, do hereby certify that the above and foregoing -25- pages in writing contain a complete full and correct transcript of the proceedings had at the August Term, A. D. 1968, of said Court, as shown by the papers on file and the records of my office, wherein Preston A. Tate was the Plaintiff, and Herman Short, Chief of Police of The City of Houston, Texas was the Defendant.

WITNESS my hand and seal of said Court at Houston, Texas, this 14th day of May, A. D., 1969.

RAY HARDY  
District Clerk  
Harris County, Texas

By: /s/ [Illegible]  
Deputy

A True Copy  
Attest:

GLENN HAYNES  
Clerk  
Court of Criminal Appeals of Texas

By: /s/ Tray Bennett  
Deputy

[SEAL]



# WRIT OF PROCEDENDO

THE STATE OF TEXAS

COUNTY CRIMINAL COURT

VS. No. 245832

AT LAW No. 1 OF

Preston A. Tate

HARRIS COUNTY, TEXAS

THE STATE OF TEXAS TO Municipal Court City  
of Houston

Harris County, Texas

WHEREAS, In the case of the State of Texas vs. Preston A. Tate

No. 245832

appealed from your Court, the appeal of said Defendant was dismissed in the County Criminal Court at Law No. 1 of said County, on the 2 day of December A. D. 1962; and a Writ of Procedendo ordered;

THEREFORE, You are hereby commanded that you proceed with the enforcement of the judgment rendered against him in your Court, the said appeal of the said Defendant to the contrary notwithstanding, that you receive and file the original papers in said cause sent herewith, and collect as well the costs of this Court, which are set forth below. Herein fail not under penalty of the law.

## BILL OF COSTS

CLERK'S FEES	SHERIFF'S FEES
<p><del>cketing Cause</del></p> <p>Entering Judgment</p> <p>Entering Complaint</p> <p>Writ of Procedendo</p> <p>Entering Appearance</p> <p>Issuing Capias</p> <p>Filing Papers</p> <p>Other Clerk Costs</p> <p><i>Manuscript</i></p> <p>TOTAL</p>	<p>Serving Capias and Mileage</p> <p>Summoning <u>2</u> Witnesses and Mileage</p> <p>Other Fees <u>Transcript 200</u> <u>26 pages at 12¢ per page 28.80</u> <u>2.00</u></p> <p>Clerk's Fees</p> <p>TOTAL</p>
<p>15 00</p> <p>26 00</p> <p>41 00</p>	<p>200</p> <p>28 80</p> <p>2 00</p> <p>43 00</p>

WHEREAS, IN THE CASE OF THE STATE VS. ...

No. 245832

appealed from your Court, the appeal of said Defendant was dismissed in the County Criminal Court at Law No. 1 of said County, on the 2 day of December A. D. 1982 and a Writ of Procedendo ordered;

THEREFORE, You are hereby commanded that you proceed with the enforcement of the judgment rendered against him in your Court, the said appeal of the said Defendant to the contrary notwithstanding, that you receive and file the original papers in said cause sent herewith, and collect as well the costs of this Court, which are set forth below. Herein fail not under penalty of the law.

### BILL OF COSTS

CLERK'S FEES	SHERIFF'S FEES
<div> <div>15 00</div> <div> <div>20</div> <div>50</div> <div>10</div> <div>50</div> </div> </div>	<div> <div>200</div> <div>200</div> </div>
<div> <div> <div>Arresting Cause</div> <div>Entering Judgment</div> <div>Entering Complaint</div> <div>Writ of Procedendo</div> <div>Entering Appearances</div> <div>Issuing Capias</div> <div>Filing Papers</div> <div>Other Clerk Costs</div> <div>Manuscript</div> </div> <div> <div>26 00</div> <div>44 00</div> </div> </div>	<div> <div> <div>Serving Capias and Mileage</div> <div>Summoning Witnesses and Mileage</div> <div>Other Fees</div> <div>Clerk's Fees</div> </div> <div> <div>200</div> <div>200</div> <div>200</div> <div>44 00</div> </div> </div>
TOTAL	TOTAL
44 00	43 00

TO CERTIFY ALL OF WHICH, Witness my hand and the Seal of said Court at Office in Houston, Texas, this the 2 day of December A. D. 1982

Paul Hardy  
Deputy  
 District Clerk, Harris County, Texas

By Seal of Court Deputy

NO. 44522

## COUNTY CRIMINAL COURT

AT LAW No. 1

HARRIS COUNTY

GM-14630JM-53439

THE STATE OF TEXAS

vs.

## WRIT OF PROCEDENDO

Issued this 2nd day ofDecember A. D. 1966

R. J. LINDLEY

District Clerk, Harris County, Texas

By [Signature] Deputy.STATE OF TEXAS  
COUNTY OF HARRIS

I, Ray Hardy, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, ~~made~~ on: March 10, 1970, as appears of record in my office.

Witness my official hand and seal of office, this March 10, 1970

RAY HARDY, DISTRICT CLERK  
Harris County, Texas

By [Signature] Deputy

## SUPREME COURT OF THE UNITED STATES

No. 1873 Misc., October Term, 1969

PRESTON A. TATE, PETITIONER

v.

HERMAN SHORT, Chief of Police, Houston, Texas

On petition for writ of Certiorari to the Court of Criminal Appeals of the State of Texas.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1757 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1970